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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,580

09/26/2004

James Francis Duffy JR.

5579

36941

7590

08/21/2006

PROTICA, INC.

250 RIDGE PIKE #B143

LAFAYETTE HILL, PA 19444

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,580	DUFFY, JAMES FRANCIS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brent T. O'Hern	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 26 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>26 September 2004</u> .                                                   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Sincock (US 3,900,120).

Regarding claim 1, Sincock ('120) teaches a hollow, cylindrical-shaped bottle (FIG-1, #10 and col. 5, ll. 13-42) having an open-ended mouth-forming portion (FIG-1, #26 and col. 5, ll. 24-27), an intermediate body-forming portion (FIG-1, #22 and col. 5, ll. 15-17) and a closed, hemispherical-shaped base-forming portion (FIG-1, #20 and col. 5, ll. 3-8).

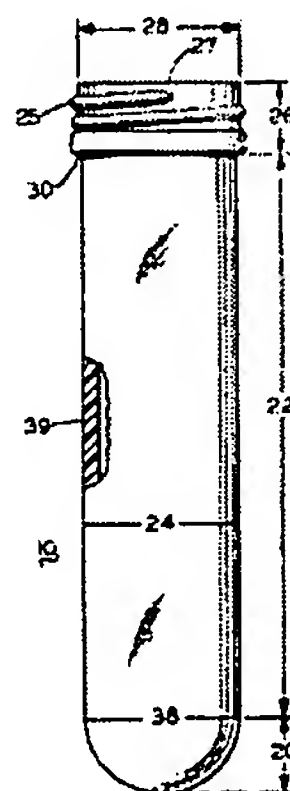


FIG. 1

Regarding claim 2, Sincock ('120) teaches a bottle wherein the body-forming portion has constant outer and constant inner diameters (*FIG-1, #10, col. 5, ll. 5-16 and col. 8, ll. 3-8*).

The phrase "for improved heat distribution during shrink sleeve application" in claim 2, lines 2-3 is not given any patentable weight since the applicant is introducing **use limitations** into the product claims (see *MPEP 2173 (q)*).

Regarding claim 3, Sincock ('120) teaches a bottle wherein the body-forming, base-forming and mouth forming portions have a minimum wall thickness of 1.5 mm and maximum wall thickness of 4 mm (*col. 8, ll. 45-53 wherein the thickness of 70-300 mils equals 1.78 – 7.64 mm*)

The phrase "for increased stress resistance, increased heat resistance and increased oxygen barrier" in claim 3, lines 3-4 is not given any patentable weight since the applicant is introducing **use limitations** into the product claims (see *MPEP 2173 (q)*).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sincock (US 3,900,120) in view of Peronek et al. (US 6,698,160).

Sincock ('120) teaches the bottle discussed above, however fails to expressly disclose wherein the mouth-forming portion comprises a polygonal-shaped flange perpendicular to the plane of the body-forming portion and where each isometric outside surface of the flange is substantially straight.

However, Peronek ('160) teaches wherein the mouth-forming portion comprises a polygonal-shaped flange perpendicular to the plane of the body-forming portion and where each isometric outside surface of the flange is substantially straight (*FIG-5, #170 and col. 16, l. 64 to col. 17, l. 8*) for the purpose of inhibiting or preventing rotation of the bottle during the capping process (*col. 18, ll. 25-37*).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time applicant's invention was made to modify Sinock's ('120) bottle with the above polygonal-shaped flange as taught by Peronek ('160) in order to provide a bottle that inhibits or prevents rotation during capping.

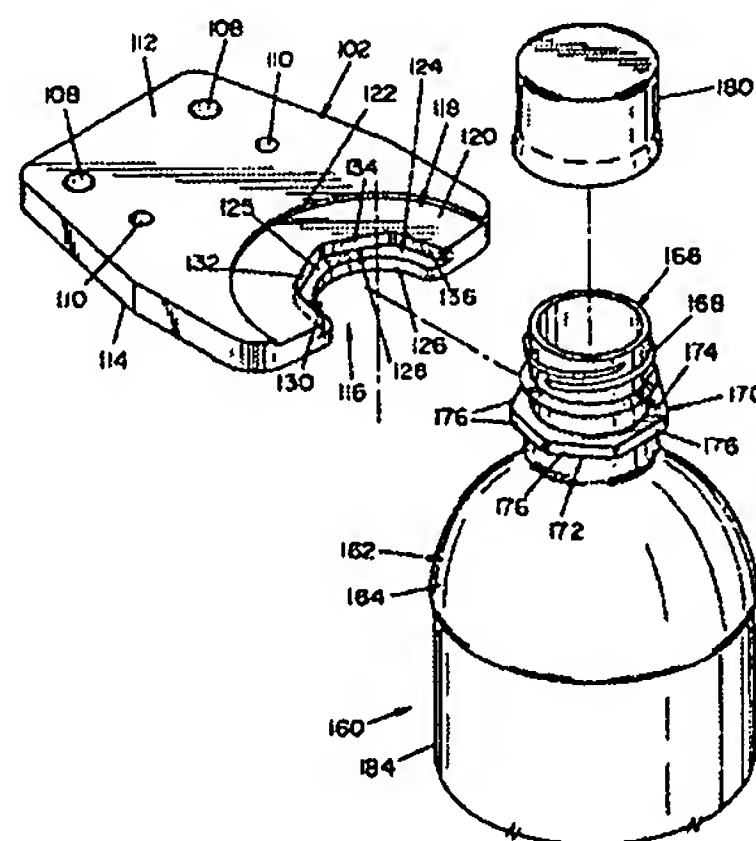


FIG. 5

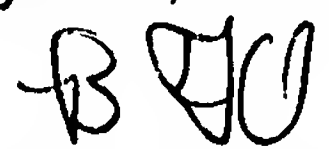
The phrase "and used for holding and stabilizing said bottle during processing" in claim 4, line 4 is not given any patentable weight since the applicant is introducing **use limitations** into the product claims (*see MPEP 2173 (q)*).

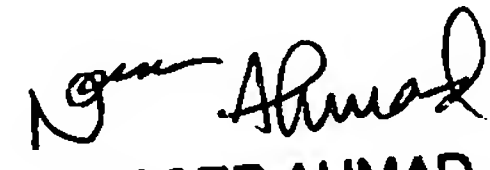
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on M-F, 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-2172. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Brent T O'Hern  
Examiner  
Art Unit 1772  
August 15, 2006

  
NASSER AHMAD  
PRIMARY EXAMINER  
8/16/06